

Appl. No. : 10/614,431
Filed : July 7, 2003

REMARKS

Applicants have canceled Claims 119, 122, 124, 137-140, and 154-155 without prejudice to, or disclaimer of, the subject matter contained therein. Applicants maintain that the cancellation of a claim makes no admission as to its patentability and reserve the right to pursue the subject matter of the canceled claims in this or any other patent application. Applicants have amended Claim 118 to import all limitations of allowed Claim 93 from U.S. Patent Application No. 10/614,644, and to remove the limitation "reintroducing said concentrated cell population that comprises adipose-derived stem cells into said patient" as discussed during the personal interview on January 8, 2008. Applicants have also amended Claims 125, 126, and 128 and have added new Claims 156-158. The amendments and new claims add no new matter and are fully supported by the specification and claims as originally filed. Support for the amendments and new claims can be found, for example, at page 7, lines 27-28; page 10, lines 27-28; page 14, lines 9-12; page 15, lines 5-7; page 18, line 18 through page 15, line 2; page 23, line 23; page 26, lines 9-11; page 27, lines 11 and 16-20; page 29, lines 8-11; and page 29, lines 15-18 and 25-26, and elsewhere throughout the specification and the claims as originally filed in the application.

On January 8, 2008, the undersigned and Examiner Lankford conducted a personal interview to discuss the Restriction Requirement mailed October 11, 2007. During the interview, the restriction requirement, claim objections, and potential obviousness-type double patenting objections with respect to U.S. Patent Application Serial No. 10/614,644 and related U.S. Patent Application No's: 11/584,202, 10/614,392, and 10/614,643 were discussed. The undersigned and the Examiner agreed that Applicants would: (1) amend the claims to incorporate all limitations of allowed Claim 93 from U.S. Patent Application No. 10/614,644; (2) amend the claims to remove the phrase "for reintroduction into a patient"; (3) amend the claims to remove references to specific ailments; (4) elect an additive for examination purposes; and (5) submit a terminal disclaimer to address any potential obviousness-type double patenting with respect to other applications in the family. The Examiner and the undersigned agreed that the proposed amendments, election, and submission would be fully responsive to the Restriction Requirement mailed October 11, 2007.

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Response to Restriction Requirement

As discussed during the personal interview on January 8, 2008, in view of the amendments to the claims, Applicants are no longer required to elect an ailment. Applicants agreed to elect an additive for the purposes of examination only. Pursuant to linking claim practice, Applicants hereby elect for the purpose of examination "unprocessed adipose tissue" as the additive.

Upon entry of the foregoing amendments, Claims 118, 120-121, 123, 125-136, 141-153, and 156-158 are pending in the application and are presented for examination. Claims 118, 120, 121, 123, 125-136, 141, and 156-158 read on the elected species.

Terminal Disclaimer

The undersigned and the Examiner discussed the possibility of obviousness-type double patenting during the personal interview on January 8, 2008. To alleviate any concerns regarding obviousness-type double patenting, Applicants hereby submit a terminal disclaimer that disclaims any terminal part of a patent that may grant on the instant application that would extend beyond the expiration dates of patents that issue to U.S. Patent Application No's: 10/614,644, 11/584,202, 10/614,643 and 10/614,392.

CONCLUSION

The undersigned has made a good faith effort to respond to the Restriction Requirement. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is invited to call the undersigned attorney to resolve such issues promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: Feb. 11, 2008

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